

REMARKS

In the Office Action mailed October 5, 2006, the Examiner rejected claims 1-31.

Applicants believe that all pending claims are in condition for allowance and respectfully request reconsideration of the present application in view of the remarks set forth below.

Rejections Under 35 U.S.C. § 103(a)

In the Office Action, the Examiner rejected claims 1-8, 12, 15-18, and 21-31 under 35 U.S.C. § 103(a) as being unpatentable over Chen et al. (U.S. Patent No. 7,035,657, hereafter referred to as “the Chen reference”) in view of Lee (U.S. Publication No. 2004/0008660, hereafter referred to as “the Lee reference”); rejected claims 9 and 11 under 35 U.S.C. § 103(a) as being unpatentable over the Chen reference in view of the Lee reference as applied to claims 1 and 7 above and in further view of Yuhara et al. (U.S. Publication No. 2004/0192189, hereafter referred to as “the Yuhara reference”); rejected claims 10, 13, and 14 under 35 U.S.C. § 103(a) as being unpatentable over the Chen reference in view of the Lee reference as applied to claims 1 and 7 above and in further view of Chang et al. (U.S. Patent No. 6,487,406, hereafter referred to as “the Chang reference”); rejected claim 19 under 35 U.S.C. § 103(a) as being unpatentable over the Chen reference in view of the Lee reference as applied to claims 15 and 16 above and in further view of Zhigang (U.S. Publication No. 2005/0014489, hereafter referred to as “the Zhigang reference”); and rejected claim 20 under 35 U.S.C. § 103(a) as being unpatentable over the Chen reference in view of the Lee reference as applied to claims 15 and 16 above and in further view of Ahmed et al. (U.S. Publication No. 2003/0174688, hereafter referred to as “the Ahmed reference”). Applicants respectfully traverse these rejections.

Legal Precedent

The burden of establishing a *prima facie* case of obviousness falls on the Examiner. *Ex parte Wolters and Kuypers*, 214 U.S.P.Q. 735 (B.P.A.I. 1979). To establish *prima facie* obviousness of a claimed invention, *all* the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). *Ex parte Wolters and Kuypers*, 214 U.S.P.Q. 735 (B.P.A.I. 1979). Additionally, obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention absent some teaching or suggestion supporting the combination. *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 732 F.2d 1572, 1577, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984). The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 U.S.P.Q.2d. 1430 (Fed. Cir. 1990). Accordingly, to establish a *prima facie* case, the Examiner must not only show that the combination includes *all* of the claimed elements, but also a convincing line of reason as to why one of ordinary skill in the art would have found the claimed invention to have been obvious in light of the teachings of the references. *Ex parte Clapp*, 227 U.S.P.Q. 972 (B.P.A.I. 1985).

Moreover, the Applicant submits that, during patent examination, the pending claims must be given an interpretation that is *reasonable* and *consistent* with the specification. *See In re Prater*, 162 U.S.P.Q. 541, 550-51 (C.C.P.A. 1969); *In re Morris*, 44 U.S.P.Q.2d 1023, 1027-28 (Fed. Cir. 1997); see also M.P.E.P. § 2111 (describing the standards for claim interpretation

during prosecution). Indeed, the *specification* is “the primary basis for construing the claims.” *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1315 (Fed. Cir. 2005) (citations omitted). It is usually dispositive. *See id.* Interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. *See In re Cortright*, 49 U.S.P.Q.2d 1464, 1468 (Fed. Cir. 1999); *see also* M.P.E.P. § 2111. That is, recitations of a claim must be read as they would be interpreted by those of ordinary skill in the art. *See Rexnord Corp. v. Laliram Corp.*, 60 U.S.P.Q.2d 1851, 1854 (Fed. Cir. 2001); *see also* M.P.E.P. § 2111.01. In summary, an Examiner, during prosecution, must interpret a claim recitation as one of ordinary skill in the art would reasonably interpret the claim in view of the specification. *See In re American Academy of Science Tech Center*, 70 U.S.P.Q.2d 1827 (Fed. Cir. 2004).

The Chen and Lee References Fail to Disclose All the Claim Limitations

As described above, the Examiner combined the Chen and Lee references in rejecting independent claims 1, 15, and 28. However, the Chen and Lee references, taken alone or in hypothetical combination, fail to disclose all the elements of claims 1, 15, and 28. Claim 1 recites: “A wireless communications system comprising an access network unit adapted to communicate with the at least one transceiver unit over the public network, wherein both the access network unit and at least one transceiver unit are configured to be directly coupled to the undedicated public network.” Claim 15 recites: “An access network unit ... comprising: a communication interface to facilitate communication between the access network unit and at least one transceiver unit over an undedicated public network, wherein the transceiver unit is configured to be directly coupled to the undedicated public network.” Claim 28 recites, “A

method of communicating in a wireless communications system, the method comprising the act of: communicating information over an undedicated public network between at least one transceiver unit...and an access network unit...wherein the transceiver unit is directly coupled to the undedicated public network.”

In sharp contrast, the Chen reference and the Lee reference, taken alone or in hypothetical combination, do not disclose communication between a transceiver unit and an access network unit over an undedicated public network, wherein the transceiver unit is directly coupled to the undedicated public network, as set forth in claims 1, 15, and 28. As conceded by the Examiner, the Chen reference fails to disclose a transceiver unit being directly coupled to the undedicated public network. Contrary to the Examiner’s assertions, however, the Lee reference fails to obviate this deficiency.

The Lee reference is directed to automating a system which uses a Dedicated Device (10) to receive GPS locations. *See* Lee, Abstract. The Dedicated Device (10) communicates with a Designated Remote Server (12) over a wireless network (20). *See* Lee, paragraph 14, Fig. 1. In rejecting claim 1, the Examiner refers to the wireless base station (22) as an access network unit with a transceiver antenna (transceiver unit). *See* Office Action, page 2. As such, only the access network unit of the wireless base station (22) is directly coupled to the wireless network (20). Therefore, the transceiver unit is *not* directly coupled with the wireless network (20). In rejecting claims 15 and 28, the Examiner again refers to the wireless base station (22) and does not refer to any new or different structure. Accordingly, Applicants assert that the Lee reference does not

disclose a transceiver unit being directly coupled to the undedicated public network. For at least this reason, the Lee reference fails to obviate the deficiencies of the Chen reference. Therefore, Applicants respectfully request withdrawal of the Section 103 rejection and allowance of claims 1, 15, and 28, as well as all claims depending therefrom.

Improper Combination of the Chen and Lee References

Additionally, Applicants assert that the combination of the Chen and Lee references is improper. First, Applicants assert that there is no motivation to combine the Chen and Lee references as posited by the Examiner. Rather, the unlikely combination suggests that the Examiner has used the structure of Applicants' own invention as a basis from which to selectively pick and choose various elements of the cited references in an attempt to cobble together obviousness rejections of independent claims 1, 15, and 28. This action, however, is clearly improper. *See In re Gorman*, 18 U.S.P.Q.2d 1885, 1888 (Fed. Cir. 1991) (stating "it is impermissible, however, simply to engage in a hindsight reconstruction of the claimed invention, *using the applicant's structure as a template* and selecting elements from references to fill the gaps." (Emphasis added)).

As set forth in the Office Action, the Examiner proposes replacing the base station 204, the base station controller ("BSC") 110, the packet control function ("PCF") 112, and the packet data serving node ("PDSN") 106 of the Chen reference with the wireless internet network 20 of the Lee reference. *See* Office Action, page 7. In support of this combination, the Examiner alleges that the motivation for this combination is a desire to "save communication resources [of

the Chen reference] by eliminating communication components or communication links which would allow the network to quickly receive a multimedia group call session request from a group of target communication devices.” *Id.* As described further below, however, Applicants respectfully assert that neither reference supports this alleged motivation to combine and, further, that one of ordinary skill in the art at the time the presently claimed subject matter was made would *not* have been motivated to combine the references as suggested by the Examiner. As such, it is evident that the Examiner has employed impermissible hindsight to arrive at the present rejection.

Specifically, Applicants respectfully assert that there is no evidence in the Chen reference that the “motivation” provided by the Examiner is even a problem. In particular, the Chen reference never mentions that speeding up the receipt of call sessions requests is even desirable. Beyond this, there is *absolutely no evidence* that making the Examiner’s proposed modifications would actually speed-up the system disclosed in the Chen reference. In fact, Applicants believe that replacing the disclosed *dedicated components* (e.g., the BCS, PCF, and PDSN) with the *generic* wireless internet network 20 would *actually slow down performance* of the group calling system disclosed in the Chen reference. As such, the “motivation” posited by the Examiner is far more likely to teach *against* the combination than to motivate one of ordinary skill in the art to make the combination.

For at least this reason, Applicants respectfully assert that there is no motivation to combine the Chen and Lee references. Accordingly, Applicants respectfully assert that the

Examiner has not established a *prima facie* case of obviousness for independent claims 1, 15, and 28 and request withdrawal of the pending Section 103 rejection.

Second, Applicants respectfully assert that there is no motivation to combine the Chen and Lee references, because modifying the Chen reference, as proposed by the Examiner, would render the Chen reference inoperable for its intended purpose. To this end, Applicants remind the Examiner that there is no motivation to combine two references if “when combined, the references ‘would produce a seemingly inoperative device.’” *Tec-Air Inc. v. Denso Manufacturing Michigan Inc.*, 52 U.S.P.Q.2d 1294, 1298 (Fed. Cir. 1999) (citing *In re Spinnoble*, 160 U.S.P.Q. 237, 244 (C.C.P.A. 1969)).

The Chen reference discloses a *structured* group communication system 100 for “multicasting media to the group of target communication devices to save network resources.” Chen, abstract, lines 1-5. As illustrated by Figs. 1 and 2 of the Chen reference, the system 100 includes a mobile station 206 that transmits data wirelessly across an air interface 208 to a base station 204. *See also* Chen, paragraph 22, lines 1-8. This received data is then transmitted from the base station 204 to a base station controller (“BSC”) 110. *See* Chen, Figs. 1 and 2. The received data then travels from the BSC 110 to the packet control function (“PCF”) 112 then to the packet data switching node (“PDSN”) 106, then to the IP network 108, and then to the group call server 102. *See* Chen, Fig. 1; *see also* paragraph 19.

Each link in this *structured transmission system* performs a vital role in organization and control of the group call. *See* Chen, paragraph 19. For example, the base station 204 processes registration information from the mobile station 206 and the PCF 112 controls routing of packets across the IP network 108. *See* Chen, paragraph 19 and paragraph 25. If, as the Examiner proposes, the base station 204, the BSC 110, the PCF 112, and the PSDN 106 were all removed and replaced with the wireless internet network 20 of the Lee reference, the system 100 would simply *not function*, much less function as intended. As described above, each component of the system 100 performs a specific task, removing all of those components and replacing them with the generic wireless internet network, (as the Examiner suggests) will simply result in an inoperable system.

In further example, the wireless internet network 20 of the Lee reference is never described as being able to perform the functions of the BSC 110. In addition to those features described above, the wireless internet network 20 is also unable to bind mobile devices with a multicast IP address or to map registered mobile devices to an IP multicast address through a shared channel (multicasting is never mentioned in the Lee reference). Chen, paragraphs 43-44. For at least this reason (amongst a multitude of further possible examples), replacing the base station 204, the BSC 110, the PCF 112, and the PSDN 106 of the Chen reference with the wireless internet network 20 of the Lee reference would clearly make the Chen reference, as modified, inoperable for its intended purpose. Accordingly, Applicants respectfully request withdrawal of the Section 103 rejection and allowance of claims 1, 15, and 28, as well as the claims that depend therefrom.

Claims 9 and 11

Applicants respectfully assert that the Examiner has not established a *prima facie* case of obviousness with regard to claims 9 and 11. As stated above, the Examiner rejected claims 9 and 11 as obvious over the Chen reference in view of the Lee reference as applied to claims 1 and 7 above and in further view of the Yuhara reference. However, as described above, the Chen and Lee references, taken alone or in hypothetical combination, clearly do not disclose those claim features attributed to it by the Examiner. Furthermore, the Yuhara reference fails to obviate the deficiencies of the Chen and Lee references. In view of these deficiencies, the Examiner's Section 103 rejections of claims 9 and 11, which are based upon the Examiner's mistaken interpretation of the Chen and Lee references, cannot establish a *prima facie* case of obviousness. As such, Applicants respectfully request withdrawal of the Section 103 rejections of claims 9 and 11.

Claims 10, 13, and 14

Applicants respectfully assert that the Examiner has not established a *prima facie* case of obviousness with regard to claims 10, 13, and 14. As stated above, the Examiner rejected claims 10, 13 and 14 as obvious over the Chen reference in view of the Lee reference as applied to claims 1 and 7 above and further in view of the Chang reference. However, as described above, the Chen and Lee references, taken alone or in hypothetical combination, clearly do not disclose those claim features attributed to it by the Examiner. Furthermore, the Chang reference fails to obviate these deficiencies. In view of these deficiencies, the Examiner's Section 103 rejections

of claims 10, 13, and 14, which are based upon the Examiner's mistaken interpretation of the Chen and Lee references, cannot establish a *prima facie* case of obviousness. As such, Applicants respectfully request withdrawal of the Section 103 rejections of claims 10, 13, and 14.

Claim 19

Applicants respectfully assert that the Examiner has not established a *prima facie* case of obviousness with regard to claim 19. As stated above, the Examiner rejected claim 19 as obvious over the Chen reference in view of the Lee reference as applied to claims 15 and 16 above and in further view of the Zhigang reference. However, as described above, the Chen reference and the Lee reference, taken alone or in hypothetical combination clearly do not disclose those claim features attributed to it by the Examiner. Furthermore, the Zhigang reference fails to obviate the deficiencies of the Chen and Lee reference. In view of these deficiencies, the Examiner's Section 103 rejections of claim 19, which are based upon the Examiner's mistaken interpretation of the Chen and Lee references, cannot establish a *prima facie* case of obviousness. As such, Applicants respectfully request withdrawal of the Section 103 rejections of claim 19.

Claim 20

Applicants respectfully assert that the Examiner has not established a *prima facie* case of obviousness with regard to claim 20. As stated above, the Examiner rejected claim 20 as obvious over the Chen reference in view of the Lee reference as applied to claims 15 and 16 above and in further view of the Ahmed reference. However, as described above, the Chen and Lee references, taken alone or in hypothetical combination, clearly do not disclose those claim


features attributed to it by the Examiner. Furthermore, the Ahmed reference fails to obviate the deficiencies of the Chen and Lee references. In view of these deficiencies, the Examiner's Section 103 rejections of claim 20, which are based upon the Examiner's mistaken interpretation of the Chen and Lee references, cannot establish a *prima facie* case of obviousness. As such, Applicants respectfully request withdrawal of the Section 103 rejections of claim 20.

Conclusion

In view of the remarks and amendments set forth above, Applicants respectfully request allowance of the pending claims 1-31. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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Michael G. Fletcher
Registration No. 32,777
FLETCHER YODER
P.O. Box 692289
Houston, TX 77269-2289
(281) 970-4545